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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

E. F., Appellant, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH, Real Party in Interest.	B233351 (Los Angeles County Super. Ct. Nos. ZW035182, ZW033840)

APPEAL from original proceeding in mandate in the Superior Court of Los Angeles County. Harold E. Shabo, Judge. Affirmed.

Jean Matulis, under appointment by the Court of Appeal, for Appellant.

No appearance for Respondent or Real Party in Interest.

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In March 2010, appellant E.F.[1] was involuntarily committed to the Pen Mar Therapeutic Center (facility) pursuant to the provisions of the Lanterman-Petris-Short Act (Act), codified at Welfare and Institutions Code, section 5000 et seq.,[2] which governs the involuntary treatment of the mentally ill in California. Almost a year after his discharge, appellant filed a petition for writ of mandate seeking various orders pertaining to his prior commitment. Appellant's petition was denied on March 30, 2011. Appellant contends the denial was in error and violated his constitutional right to due process. We affirm.

DISCUSSION

On March 3, 2010, appellant was involuntarily committed to the facility on a 72-hour hold pursuant to section 5150 following an incident with police officers at an Amtrak train station, in which he was described as exhibiting "disorganized" and "hostile" behavior and talking about guns. On March 5, 2010, the facility sought to extend the involuntary hold for an additional 14 days pursuant to section 5250, and a certification review hearing was scheduled in accordance with the Act. The certification review hearing requires a finding of probable cause for further detention. (See § 5256.6; *Doe v. Gallinot* (9th Cir. 1981) 657 F.2d 1017.)

The appointed hearing officer conducted the certification review hearing on March 8, 2010, within the required statutory four-day timeframe. (§§ 5254, 5256, 5256.1.) The hearing officer found no probable cause that appellant was a danger to himself or others, but found probable cause justifying appellant's continued involuntary commitment for treatment based on a finding he was "gravely disabled" within the meaning of the statutory scheme. "[G]ravely disabled," as relevant here, means "[a] condition in which a

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[1] We have abbreviated appellant's name to protect his privacy. (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008, fn. 1, citing Welf. & Inst. Code, § 5325.1, subd. (b).)

[2] All further undesignated section references are to the Welfare & Institutions Code, unless otherwise indicated.

person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).)

The certification record states appellant was indigent and had reported to facility staff members that he sometimes stayed at St. Vincent's shelter and received general relief. Appellant's assigned patient advocate stated on his behalf that appellant wanted to return to the shelter, denied kicking the police officers, had only asked about Amtrak's policy of carrying guns on the train, and had not acted agitated or hostile. The record also reiterates the hearing officer's assessment that appellant was continuing to exhibit belligerent and paranoid behavior, and refusing to take his medications, thus warranting additional treatment and detention.

Following the conclusion of the certification review hearing, appellant immediately filed a petition for writ of habeas corpus pursuant to section 5275 challenging the validity of the certification and his continued involuntary commitment for an additional period of up to 14 days. A hearing on appellant's habeas petition was scheduled for March 10, 2010, and the public defender's office was appointed to represent appellant in the proceedings. On the day of the hearing, the facility offered to discharge appellant. Appellant agreed to the release and was discharged from the facility on March 10, 2010, after a total of seven days of involuntary commitment. Appellant did not appear at the hearing on his writ, and the writ was discharged.

On February 1, 2011, almost a year after his release, appellant, in propria persona, filed a document titled "Ex Parte Request for Judicial Review of W&I 5250 administrative hearing, Appointment of Counsel, and issuance of writ of mandate requiring W&I 5250(d) be adhered to in any decision rendered." [*Sic.*] The trial court treated the filing as a petition for writ of mandate. After affording appellant reasonable and ample opportunities to state his grounds for relief, the court denied appellant's petition on March 30, 2011.

Appellant appeals the trial court's order denying his petition for writ of mandate, which we find to be an appealable order. (See *Covina-Azusa Fire Fighters Union v. City*

of Azusa (1978) 81 Cal.App.3d 48, 56.) We further conclude appellant's petition was properly denied.

Appellant's petition is somewhat ambiguous but, if construed liberally, seeks several orders from the trial court, including an order compelling reversal of the finding made by the hearing officer on March 8, 2010, that he was "gravely disabled" and compelling a new certification review hearing, as well as an order directing that all state and federal "databases" delete any reference to his certification under the Act.

Given the nature of the relief sought, the trial court was correct in characterizing appellant's filing as a petition for writ of mandate pursuant to Code of Civil Procedure section 1085.[3] Judicial review of an agency decision pursuant to Code of Civil Procedure, section 1085 is " ' " ' "limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law." ' [Citations.]" ' [Citation.] Where the case involves the interpretation of a statute, we engage in de novo review of the trial court's determination to issue the writ of mandate." (*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584 (*City of Pomona*).)

In denying appellant relief, the trial court correctly explained that under the Act, appellant's primary remedy for challenging the certification review process was the petition for habeas corpus pursuant to section 5275 -- a petition which appellant filed but chose not to proceed with on the merits in light of his release from the facility on the day

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3 Assuming, without deciding, appellant's filing could be properly treated as a timely petition for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5 (as he argues on appeal, but fails to support with authority), we would still affirm. There was nothing presented to the trial court which would support a finding the hearing officer acted in excess of jurisdiction, failed to conduct the review hearing in the manner required by law or lacked evidence in support of his certification finding. In stating his grievances to the court at the hearing, appellant primarily complained about how the facility staff treated him and that his patient advocate was not a lawyer, but he did not raise issues concerning the conduct of the hearing officer.

scheduled for the hearing. The statutory scheme plainly sets forth the habeas petition procedure as the means by which an individual may challenge the "probable cause" determination or certification review hearing. Section 5256.7 provides that upon conclusion of the certification review hearing in which it is determined that an additional 14 days of commitment is warranted, the detained individual shall be given notice of the certification decision and "his or her rights to file a request for release and to have a hearing on the request before the superior court as set forth in Article 5 (commencing with Section 5275)."

Further, in ruling on a habeas petition, the court is expressly authorized to assess the validity of the basis for continued detention. Section 5276 provides, in pertinent part, that: "If the court finds, (a) that the person requesting release is not, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled, . . . he or she shall be released immediately." However, appellant chose to forego attendance at the hearing, failing to appear to request any substantive orders from the court on his petition.

Moreover, appellant has another statutory remedy afforded by section 8103 to address his alleged harm. Other than his contention he was wrongfully committed in the first instance, appellant's only clear assertion of harm is the fact the March 8, 2010 certification finding and detention pursuant to section 5250 resulted in the abridgment of his Second Amendment right to purchase, own or possess a firearm. He therefore sought an order "vacating" the certification finding and ordering all agencies to delete reference to it in any "databases."

Involuntary detention for mental health treatment results in a five-year prohibition against gun ownership or possession. (§ 8103.) With respect to any person, such as appellant, certified for mental health treatment pursuant to section 5250, he or she shall not "own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years." (§ 8103, subd. (g)(1).)

However, subdivision (g)(4) of section 8103 provides an express remedy to lift this prohibition: "Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. . . . . If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information." The record evinces no effort by appellant to avail himself of this statutory remedy to lift the prohibition on his right to own and possess firearms and to obtain the resulting notification to the Department of Justice to delete references to same in its records.

Appellant therefore failed to show he lacked an adequate remedy to redress his claims of harm arising from the certification review process and therefore, failed to establish any basis for issuance of a writ of mandate as presented to the court. " '[A] writ will lie when there is no plain, speedy, and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear and beneficial right to performance.' [Citation.]" (*City of Pomona, supra,* 58 Cal.App.4th at p. 584.)

Appellant has also failed to establish how the statutory remedies available to him violated his due process rights. Appellant erroneously asserts that the prohibition on gun ownership or possession is a "permanent" disability imposed upon individuals who are involuntarily committed under the Act, and that there should therefore be heightened safeguards to protect against the loss of that constitutionally protected right. However, the prohibition lasts only five years. And, as explained above, there is an express statutory procedure by which appellant may seek a lifting of the prohibition at an earlier date -- a remedy of which appellant may yet avail himself if he so chooses. The United States Supreme Court, in acknowledging the constitutional stature of the Second Amendment right to private gun ownership, nonetheless explained that "nothing in [this]

opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." (*District of Columbia v. Heller* (2008) 554 U.S. 570, 626.)

To the extent appellant may seek further relief, we express no opinion whether he may still have a viable civil action for traditional or administrative mandamus.

DISPOSITION

The trial court's March 30, 2011 order denying appellant's petition is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.